

FCC MAIL SECTION Federal Communications Commission

DA 97-343

FEB 21 4 37 PM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Weaverville, California)

)
)
) MM Docket No. 96-168
) RM-8836
)
)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 14, 1997

Released: February 21, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making* ("Notice"), 11 FCC Rcd 9168 (1996), issued in response to a petition for rule making filed on behalf of Terry L. Dunning ("petitioner") proposing the allotment of Channel 299A to Weaverville, California, as that community's second local FM service. Petitioner did not file initial comments in response to the *Notice*.¹ Corey J. McCaslin ("McCaslin") filed opposing comments and an untimely counterproposal seeking the allotment of Channel 299C3 at Hayfork, California.² Petitioner filed reply comments supporting the proposed allotment of Channel 299A to Weaverville.³ McCaslin filed an opposition to petitioner's reply comments,

¹ However, see footnote 3, *infra*, for an explanation of the petitioner's failure to file initial comments.

² McCaslin's counterproposal was received at the Commission after the initial comment period specified in this proceeding, and therefore it is untimely. See Section 1.420(d) of the Commission's Rules and the Appendix to the *Notice*. As a result of the late filing, McCaslin's counterproposal is unacceptable for consideration and therefore was not placed on public notice.

³ In his reply comments, petitioner provided a verified statement explaining that he is currently living and working in Ukiah, California, located approximately 140 miles from his home in Fortuna. Further, petitioner advises that as late as August 29, 1996, no written communication from the Commission nor his counsel had been delivered to his mail box to advise of the deadline established in this proceeding for filing initial comments. Petitioner states that during the last week of September, a voice mail notification from his attorney was left at his Fortuna residence, advising that counsel's attempts to contact the petitioner by mail to sign relevant documents for filing in this proceeding had been unsuccessful, as the correspondence had been returned. Petitioner advises that he contacted his attorney immediately, who then faxed copies of the *Notice* and related documents in this proceeding for the petitioner's perusal, as well as documents requiring his signature. Petitioner reports that he promptly signed the necessary documents supplied by his attorney, in which *inter alia*, he provided the requisite expression of interest in pursuing the Weaverville allotment proposal, either individually, or as a principal of an applicant, and returned the documents to his Washington counsel the same day.

(continued...)

accompanied by a motion to accept.⁴

2. Petitioner states that Weaverville (population 3,370),⁵ is the seat of local government for Trinity County, as well as a local retail business hub and the center of the county school system. Therefore, petitioner states that in light of Weaverville's importance to the small inter-mountain Trinity County, his proposal would provide the best economically viable use of the requested frequency and urges its adoption.

3. Initially, it should be noted that a staff review of the proposal reveals that the proposed allotment of Channel 299A at Weaverville has subsequently become mutually exclusive with the sites specified in a majority of the applications for Channel 296C3 at Shasta Lake City, California.^{6,7} It is the Commission's policy to attempt to eliminate conflicts between a rulemaking petition and later filed applications where possible to do so without prejudicing the affected parties. See, *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments ("Conflicts")*, 8 FCC Rcd 4743, 4745 N.12 (1993). See also, *Kerman, California*, 11 FCC Rcd 2887 (1996). Although the staff attempted to site restrict Channel 299A at Weaverville to accommodate the petitioner's desire to serve that community, while simultaneously resolving the mutual exclusivity with the majority of the applicants for Channel 296C3 at Shasta Lake City, the terrain surrounding Weaverville precludes the use of a restricted site. One of the crucial factors in determining if an allotment is technically acceptable is whether a suitable site area exists in which to locate a transmitter

¹(...continued)

The Commission's Rules do not contemplate the acceptance of a late-filed expression of interest unless the proceeding is uncontested. See *Santa Isabel, Puerto Rico*, 51 FR 6119 (1986), *aff'd*, 2 FCC Rcd 3454 (1987), *aff'd*, 3 FCC Rcd 2236 (1988), *aff'd*, 918 F.2d 960 (D.C. Cir.). In view of our rejection of McCaslin's counterproposal, petitioner's expression of interest contained in his reply comments can be accommodated without prejudicing any other pending request. Therefore, we will consider the petitioner's late-filed expression of interest contained in his reply comments to enable us to resolve this proceeding on the basis of a complete record. However, we need not consider the petitioner's reply comments to the extent they address McCaslin's rejected counterproposal.

⁴The Commission's Rules do not contemplate the acceptance of comments filed beyond the comment cycle unless specifically requested or authorized by the Commission. See Section 1.415(d) of the Commission's Rules. Neither criteria is applicable in this instance. Therefore, and in view of our rejection of the counterproposal submitted by McCaslin, the additional comments will not be considered.

⁵Population figure was taken from the 1990 U.S. Census.

⁶Channel 296C3 was allotted to Shasta Lake City, CA, in the context of MM Docket Nos. 94-76 and 94-77. See *Chester, Shasta Lake City, Alturas, McCloud and Weaverville, California*, 11 FCC Rcd 5288 (1996).

⁷Applications for Shasta Lake City are comprised of the following: File Nos. BPH-960716MD, BPH-960717MA, BPH-960718MA, BPH-960718MC, BPH-9760718MD, BPH-960718ME, BPH-960718MF, and BPH-960718MG.

complying with all of the Commission's engineering requirements and the ability to provide adequate service to the community. In this instance, we discovered that while a theoretical site located 13.5 kilometers (8.4 miles) northwest of Weaverville would remove the instant conflict with the affected applicants for Channel 296C3 at Shasta Lake City, the site would not provide a transmission path free of major obstructions, as required by Section 73.315 of the Commission's Rules. Our analysis has determined that a tower of at least 1,256 meters (4,120 feet or 4/5 of a mile) would be required to clear intervening terrain obstructions. Moreover, we note the existence of an airport north of Weaverville would place the site for Channel 299A in an area 13.3 kilometers (8.2 miles) west of the airport. Additionally, as Weaverville is adjacent to the Trinity National Forest to the west, the suitability of an acceptable transmitter site to accommodate Channel 299A at Weaverville may be further restrained. In view of the limitations associated with the technical utilization of Channel 299A at Weaverville, yet in an effort to accommodate the Weaverville proposal, we have determined that Channel 266A can be allotted to the community in conformity with the requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction.

4. In consideration of the above, we will allot Channel 266A to Weaverville, California, based upon the petitioner's expression of interest in providing an additional local FM transmission service to that community. The allotment of Channel 266A to Weaverville will remove an existing conflict with applications filed for Channel 296C3 at Shasta Lake City, California, without prejudicing any other timely filed FM application or rule making petition, consistent with Commission policy.⁸ Coordinates used for Channel 266A at Weaverville are 40-44-00 and 122-56-24.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 7, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Weaverville, California, as follows:

<u>City</u>	<u>Channel No.</u>
Weaverville, California	266A, 276C2

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. The window period for filing applications for Channel 266A at Weaverville, California, will open on April 7, 1997, and close on May 8, 1997.

⁸See *Conflicts, supra*.

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 266A at Weaverville, California, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau